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14 BAKER BOTTS, LLP

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17

18 NETFLIX, INC., a Delaware corporation,
19
20 Plaintiff,

21 v.

22 BLOCKBUSTER, INC., a Delaware
corporation, DOES 1-50,

23 Defendant.
24

25 AND RELATED COUNTERCLAIMS
26
27
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Case No. C 06 2361 WHA (JCS)

**STIPULATION AND [PROPOSED]
ORDER REGARDING DEPOSITION OF
BAKER BOTTS, LLP**

Complaint filed: April 4, 2006

1 WHEREAS, on or around April 5, 2007 Plaintiff and Counterclaim-Defendant Netflix,
2 Inc. ("Netflix") served a subpoena demanding testimony and documents upon non-party Baker
3 Botts, LLP, with the deposition to take place in Dallas on April 24, 2007;

4 WHEREAS, the documents and testimony requested of Baker Botts, LLP touch upon
5 issues that relate to Defendant and Counterclaim-Plaintiff Blockbuster, Inc. ("Blockbuster")'s
6 decision to rely upon the advice of counsel in this case;

7 WHEREAS, the parties have reached an agreed-upon briefing schedule on issues relating
8 to Blockbuster's reliance on the advice of counsel in which opening briefs are due to be filed on
9 May 4, opposition briefs are to be filed on May 18, and reply briefs are to be filed on May 25,
10 with a hearing set before the Honorable Joseph C. Spero on June 8;

11 WHEREAS, counsel for Baker Botts has indicated that the witness who is most
12 knowledgeable about the matters on which Netflix seeks testimony is unavailable the week of
13 April 23, but is willing and able to sit for a deposition on Wednesday, May 2 in Dallas, which
14 date comes after the cutoff set for fact discovery in this case but prior to the date upon which
15 briefs relating to the issue of Blockbuster's decision to rely on the advice of counsel are to be
16 filed;

17 NOW, THEREFORE, Netflix, Blockbuster, and Baker Botts, LLP respectfully request
18 that the deposition of Baker Botts, LLP be permitted to be taken on Wednesday, May 2.
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[PROPOSED] ORDER

After reviewing the foregoing stipulation, and good cause appearing, it is ordered that the deposition of Baker Botts, LLP in this matter may be taken on May 2, 2007.

Dated: April 25, 2007

Respectfully submitted,

KEKER & VAN NEST, LLP

By: /s/ Eugene M. Paige
Eugene M. Paige
Attorneys For Plaintiff and Counterclaim
Defendant NETFLIX, INC.

Dated: April 25, 2007

Respectfully submitted,

VINSON & ELKINS LLP

By: /s/ Michael L. Raiff
Michael L. Raiff
Attorneys For Defendant and Counterclaim
Plaintiff BLOCKBUSTER INC. and
Non-party BAKER BOTTS, LLP

I hereby attest, pursuant to section X of General Order 45, that concurrence in the filing of this document has been obtained from Michael L. Raiff, Esq., Attorney for Defendant and Counterclaim Plaintiff Blockbuster Inc. and Non-party Baker Botts, LLP.

Dated: April 25, 2007

By: /s/ Eugene M. Paige

Pursuant to stipulation, IT IS SO ORDERED.

Dated:

By: _____
THE HON. WILLIAM H. ALSUP
UNITED STATES DISTRICT JUDGE